

## **Senate Bill No. 929**

### **CHAPTER 313**

An act to amend Sections 25214.2, 25214.3, 25214.3.1, 25214.3.3, 25214.4, and 25214.4.1 of, to amend the heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of, and to add Section 25214.3.5 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 25, 2010. Filed with  
Secretary of State September 27, 2010.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 929, Pavley. Hazardous materials: children's jewelry: heavy metals.

(1) Existing law prohibits the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely from certain specified materials. Existing law prohibits parties that are signatories to a specified consent judgment from being subject to enforcement under those provisions.

This bill would additionally prohibit a person from manufacturing, shipping, selling, offering for sale, or offering for promotional purposes children's jewelry that contains any component or is made of any material that is more than 0.03% cadmium by weight. This bill would exempt from this prohibition any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 and would make conforming changes. The bill would provide that the exemption from enforcement action for signatories to that consent judgment does not apply to this prohibition.

(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process by which chemicals or chemical ingredients in products may be identified and prioritized for consideration as being chemicals of concern and to adopt regulations to establish a process by which chemicals of concern may be evaluated. The department is prohibited from duplicating or adopting conflicting regulations for regulated product categories.

This bill would prohibit cadmium-containing jewelry from being considered as a product category already regulated or subject to pending regulation for purposes of those regulations.

(3) Existing law imposes criminal penalties upon a manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead in violation of those provisions or who knowingly and with intent to

deceive falsifies any document or certificate required to be kept or produced pursuant to those provisions.

This bill would additionally impose those criminal penalties upon a manufacturer or supplier of jewelry containing cadmium, thereby imposing a state-mandated local program by creating new crimes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Article 10.1.1 (commencing with Section 25214.1) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended to read:

Article 10.1.1. Metal-Containing Jewelry

SEC. 2. Section 25214.2 of the Health and Safety Code is amended to read:

25214.2. (a) A person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes jewelry for retail sale or promotional purposes in the state, unless the jewelry is made entirely from a class 1, class 2, or class 3 material, or any combination thereof.

(b) Notwithstanding subdivision (a), a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes in the state, unless the children's jewelry is made entirely from one or more of the following materials:

(1) A nonmetallic material that is a class 1 material and that does not otherwise violate the requirements of paragraph (4).

(2) A nonmetallic material that is a class 2 material.

(3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.

(4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.

(5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(c) Notwithstanding subdivision (a), a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes body piercing jewelry for retail sale or promotional purposes in the state, unless the body piercing jewelry is made of one or more of the following materials:

- (1) Surgical implant stainless steel.
- (2) Surgical implant grade of titanium.
- (3) Niobium (Nb).
- (4) Solid 14 karat or higher white or yellow nickel-free gold.
- (5) Solid platinum.
- (6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

(d) Notwithstanding paragraphs (1) and (2) of subdivision (d) of Section 25214.3, as of January 1, 2012, no person shall manufacture, ship, sell, offer for sale, or offer for promotional purposes children's jewelry that contains any component or is made of any material that is more than 0.03 percent cadmium (300 parts per million) by weight. This subdivision shall not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-314).

(e) The department may establish a standard for children's jewelry or for a component of children's jewelry that is more protective of public health, of sensitive subpopulations, or of the environment than the standard established pursuant to subdivision (d).

SEC. 3. Section 25214.3 of the Health and Safety Code is amended to read:

25214.3. (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.
- (C) The economic effect of the penalty on the violator.
- (D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.
- (E) The willfulness of the violator's misconduct.
- (F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.
- (G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article.

(d) (1) Notwithstanding subdivision (b), a party that is a signatory to the amended consent judgment, or a party that is a signatory to a consent judgment entered in the consolidated action entitled *People vs. Burlington Coat Factory Warehouse Corporation, et al.* (Alameda Superior Court Lead Case No. RG 04-162075) that contains identical or substantially identical terms as provided in Sections 2, 3, and 4 of the amended consent judgment, shall not be subject to enforcement pursuant to this article, and an action brought to enforce this article against the party shall be subject to Section 4 of the amended consent judgment.

(2) The Legislature finds and declares that the amendment of this subdivision by the act amending this section during the 2007–08 Regular Session of the Legislature is declaratory of existing law.

(3) This subdivision does not apply to any action brought to enforce subdivision (d) of Section 25214.2.

(e) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be

subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

SEC. 4. Section 25214.3.1 of the Health and Safety Code is amended to read:

25214.3.1. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry sold or offered for sale in this state shall do either of the following:

(1) Provide a certification to a person who sells or offers for sale that manufacturer's or supplier's jewelry, upon the request of that person.

(2) Display the certification prominently on the shipping container or on the packaging of jewelry.

(c) The certification required by subdivision (b) shall attest that the jewelry does not contain a level of lead or cadmium that would prohibit the jewelry from being sold or offered for sale pursuant to this article.

SEC. 5. Section 25214.3.3 of the Health and Safety Code is amended to read:

25214.3.3. A manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead or cadmium in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 6. Section 25214.3.5 is added to the Health and Safety Code, to read:

25214.3.5. (a) This article does not limit, supersede, duplicate, or otherwise conflict with the authority of the department to fully implement Article 14 (commencing with Section 25251), including the authority of the department to include products in its product registry.

(b) Notwithstanding subdivision (c) of Section 25257.1, cadmium-containing jewelry shall not be considered as a product category already regulated or subject to pending regulation for purposes of Article 14 (commencing with Section 25251).

SEC. 7. Section 25214.4 of the Health and Safety Code is amended to read:

25214.4. The test methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B, 3051A, and 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, as currently updated)

for the material being tested, except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:

(a) When preparing a sample, the laboratory shall make every effort to ensure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(b) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(c) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(d) A sample shall be digested in a container that is known to be free of lead and cadmium and with the use of an acid that is not contaminated by lead or cadmium, including analytical reagent grade digestion acids and reagent grade deionized water.

(e) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(f) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

(g) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

SEC. 8. Section 25214.4.1 of the Health and Safety Code is amended to read:

25214.4.1. In addition to the requirements of Section 25214.4, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.1 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a class 1 material the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.01 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Digested samples may require dilution prior to analysis.

(4) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Plastic beads or stones shall be crushed prior to digestion.

(4) Digested samples may require dilution prior to analysis.

(5) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(6) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead or cadmium. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from

that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) The number of pearls used to make the composite shall be noted.

(5) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead or cadmium analysis.

(6) The digestate shall be diluted in the minimum volume practical for analysis.

(7) The digested sample shall be analyzed according to specification of an approved and validated methodology for inductively coupled plasma mass spectrometry.

(8) A reporting limit of 0.001 percent (10 parts per million) in the coating shall be obtained for the analysis.

(9) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal used in children's jewelry, the following testing protocols for determining weight shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the National Institute of Standards and Technology (NIST) of the Department of Commerce.

(3) The calibration of the scale shall be accurate to within 0.01 gram.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.